CURRENT DECISIONS

AGENCY—MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO INVITEE.—The driver of the defendant's truck invited the fifteen-year old plaintiff to ride. While the plaintiff was on the running board the truck struck a rut in the street, causing him to fall. The plaintiff sued for the injuries sustained. *Held*, that a nonsuit was proper. *Zampella v. Fitzhenry* (1922, N. J. L.) 117 Atl. 711.

The court follows the orthodox view that the rule of *respondeat superior* does not apply. *Goldberg v. Borden's Milk Co.* (1920) 227 N. Y. 465, 125 N. E. 807. There is, however, a modern tendency to look upon the plaintiff as a trespasser and then to inquire what duty is owed him as such. *Kalmich v. White* (1920) 95 Conn. 568, 111 Atl. 845; *Hibbee v. Jackson* (1920) 101 Ohio St. 75, 128 N. E. 61. See (1920) 30 YALE LAW JOURNAL, 85; (1921) 30 *ibid.* 758.

BILLS AND NOTES—RECEIPT OF MONEY FROM AN EMBEZZLER.—An officer of a corporation converted some of its money and in due course of business paid the same to the defendant bank for his personal debts. The defendant, ignorant of the conversion, acted in good faith. The corporation became bankrupt, and the receiver sued the bank. *Held*, (one judge *dissenting*) that the plaintiff could recover. *People's State Bank v. Kelley* (1922, Ind.) 136 N. E. 30.

The case is lamentably out of line with the authorities. *Merchants Loan & T. Co. v. Lamson* (1899) 90 Ill. App. 18; *First Nat'l Bank v. Gibert* (1909) 123 La. 846, 49 So. 593; 25 L. R. A. (N. S.) 631, note.

CITIZENS—PRESUMPTION OF LOSS OF CITIZENSHIP BY NATURALIZED ALIEN—REFUSAL OF PASSPORT BY STATE DEPARTMENT NOT CONCLUSIVE.—The Act of March 2, 1907 (34 Stat. at L. 1228) provides that any naturalized citizen who resides for two years in the foreign state from which he came shall be presumed to have ceased to be an American citizen, unless he presents to a diplomatic or consular officer satisfactory evidence to overcome the presumption. The plaintiff, a naturalized citizen of German birth, owning property in Nebraska, returned to Germany and remained there for over two years. At the outbreak of the war he was refused a passport because he failed to present satisfactory evidence to overcome the statutory presumption. Having succeeded in getting back to the United States on an illegal passport in 1921, the plaintiff sued to recover his property seized by the Alien Property Custodian. *Held*, that the action of the State Department in refusing to issue a passport was not conclusive on the court on the question of citizenship and that the plaintiff could recover. *Sinjen v. Miller* (1922, D. Neb.) 281 Fed. 889.

The mere act of returning to the United States does not rebut the statutory presumption of expatriation. *United States, ex rel. Anderson, v. Howe* (1916, S. D. N. Y.) 231 Fed. 546; but see (1910) 28 Op. Att'y. Gen. 504. But the absence of any affirmative renunciation of American citizenship and the continued holding of property in this country were held sufficient in the instant case to prove that the plaintiff did not intend to expatriate himself. For a discussion of this subject, see Flournoy, *Naturalization and Expatriation* (1922) 31 YALE LAW JOURNAL, 702, 848.

CRIMINAL LAW—DISTINCTION BETWEEN ROBBERY AND EXTORTION.—In accordance with a plan conceived by the defendant, X's hotel room was visited by one of the defendant's female confederates. By claiming to be the woman's husband and by threatening X with a revolver, the male confederate obtained from X

a sum of money. The defendant, having been convicted for aiding and abetting a robbery, brought error on the ground that his offence, if any, was extortion. *Held*, that there was no error. *State v. Casto* (1922, Wash.) 207 Pac. 952.

This case seems sound since extortion is the corruptly demanding or receiving for services money not due by law; and as a general rule can be committed only by an officer under color of his office. 2 Bishop, New Criminal Law (8th ed. 1892) 225; *Holt v. State* (1912) 11 Ga. App. 34, 74 S. E. 560; *State v. Cooper* (1908) 120 Tenn. 549, 113 S. W. 1048; but see 2 Bishop, *op. cit.* 227.

CRIMINAL LAW—HYDRO-AEROPLANE NOT A FLOATING STRUCTURE.—A New York statute made it a misdemeanor to operate on certain lakes a "boat, barge, vessel or other floating structure" if "propelled . . . . by an engine operated by the explosion of gas . . . . without . . . . a muffler . . . ." N. Y. Laws, 1917, ch. 305, sec. 1500a. The relator, a pilot of a hydro-aeroplane, was convicted of violating the statute, and appealed. *Held*, that a hydro-aeroplane was not a "floating structure" within the meaning of the statute. *New York, ex rel. Cushing v. Smith*, (1922, Sup. Ct.) 119 Misc. 294.

For the jurisdiction of admiralty over these amphibious "vessels," see (1922) 31 YALE LAW JOURNAL, 437.

DAMAGES—QUASI-CONTRACT—EMPLOYEE'S REMEDIES UPON A WRONGFUL DISCHARGE.—The defendant, having been engaged by a third party to clear certain land, employed the plaintiff to help him. It was agreed that the defendant should receive $3.50 per day as the work progressed and an additional sum at the rate of $3.50 per day at the completion of the work, provided the enterprise proved sufficiently profitable. It was further agreed that the net profit or loss should be divided equally between the parties. The defendant wrongfully discharged the plaintiff and finished the work alone, to his loss. The plaintiff, having been paid but $3.50 per day, sued for an additional sum at the rate of $3.50 per day as the reasonable value of his services. *Held*, that the action would not lie. *Bailey v. Furleigh* (1922, Wash.) 208 Pac. 1091.

In labor cases reasonable value is not usually determined by the value of the product of the labor to the defendant. *San Francisco Bridge Co. v. Dumbarton Land Co.* (1897) 119 Calif. 272, 51 Pac. 335; *Mooney v. York Iron Co.* (1890) 82 Mich. 263, 46 N. W. 376. It is to be observed in the present case that the plaintiff would have been subject to his half of the net loss if he had completely performed the contract. It seems, however, that this defense should not be available to a wrongful repudiator. *Knotts v. Clark Construction Co.* (1918) 161 C. C. A. 217, 249 Fed. 181; but see *Wellston Coal Co. v. Franklin Paper Co.* (1897) 57 Ohio St. 182, 48 N. E. 888; Woodward, *Quasi-Contracts* (1913) 432, note 1.

HUSBAND AND WIFE—WIFE CANNOT SUE HUSBAND FOR NEGLIGENCE.—The plaintiff, while riding with the defendant at his invitation, was injured by reason of his negligent operation of the automobile. She brought this action to recover damages for injuries sustained on that occasion. The action was commenced by the service of a summons. Thereafter, and before the complaint was served, the plaintiff married the defendant, a fact which was alleged in the complaint. *Held*, that the complaint stated no cause of action. *Newton v. Weber* (1922, Sup. Ct.) 119 Misc. 240, 196 N. Y. Supp. 113.

Although neither spouse had a right of action at common law against the other for a personal tort, many courts, through a liberal construction of the married women's acts, permit such an action to be maintained. *Prosser v. Prosser* (1919) 114 S. C. 45, 102 S. E. 787; *Cromwell v. Cromwell* (1920) 180 N. C. 516, 105 S. E. 206; *contra, Woltman v. Woltman* (1922, Minn.) 189 N. W. 1022; see (1918) 27 YALE LAW JOURNAL, 1081; (1920) 30 *ibid.* 188; Albertsworth, *New*

Interests in the Law of Torts (1922) 10 CALIF. L. REV. 461, 471. The New York courts have consistently refused to allow the action. *Perlman v. Brooklyn City Ry.* (1921, Sup. Ct.) 117 Misc. 353, 191 N. Y. Supp. 891.

INJUNCTIONS—TRADE SECRETS—SOLICITATION OF CUSTOMERS.—After having been employed by the plaintiff as a driver of his laundry wagon, the defendant entered into business for himself and solicited the plaintiff's customers, a knowledge of whom he had acquired in the course of employment. The plaintiff sought to restrain the solicitation. *Held,* (one judge *dissenting*) that an injunction should not be granted. *Fulton Laundry Co. v. Johnson* (1922, Md.) 117 Atl. 753.

An employee will be restrained from either using or disclosing to others the knowledge of trade secrets acquired in the course of his employment. *Stevens v. Stiles* (1909) 29 R. I. 399, 71 Atl. 802; *Elaterite Paint Co. v. Frost* (1908) 105 Minn. 239, 117 N. W. 388; Nims, *Unfair Competition* (1909) sec. 215. What constitutes a trade secret is a question of fact. Ordinarily a knowledge of customers is not considered peculiar or confidential information. *Simms v. Burnette* (1908) 55 Fla. 702, 46 So. 90; *Stein v. Nat. Life Ass'n.* (1899) 105 Ga. 821, 32 S. E. 615. In conformity with this view the court in the principal case refuses to consider as a trade secret a fact which was susceptible of discovery by any third party. See (1918) 28 YALE LAW JOURNAL, 838; COMMENTS (1915) 25 *ibid.* 499.

INSURANCE—RECOVERY OF PREMIUM PAID.—In compliance with the National Prohibition Act the plaintiff submitted with his application for a permit to sell liquor a surety bond furnished by the defendant, the plaintiff having paid the premium thereon. After a delay the plaintiff's application was rejected. He thereupon returned the bond to the defendant and demanded the return of the premium. *Held,* that the plaintiff could recover. *Lattarula v. National Surety Co.* (1922, Mun. Ct.) 196 N. Y. Supp. 98.

The general rule is that the premium must be returned if the risk was never run. *Tyrie v. Fletcher* (1777, K. B.) Cowp. 666. It has been qualified, however, to the extent that the insured may not recover premiums paid if he intentionally or fraudulently prevents the risk from attaching. Vance, *Insurance* (1904) 246. The instant case comes within the general rule and is clearly correct.

INTOXICATING LIQUORS—FORFEITURE OF AUTOMOBILE CARRYING LIQUOR.—A truck used in the illegal transportation of liquor was seized, while in the possession of the applicant's son, by virtue of a statute providing that where liquors are illegally transported, the vehicle may be seized, and unless good cause to the contrary is shown by the owner, it may be sold at public auction. N. Y. Laws, 1921, ch. 156. The applicant asked for the return of the truck on the ground that he merely loaned it to his son, and had no information as to the purpose for which it was being used. *Held,* that the owner could not recover. *Matter of Denemark* (1922, Co. Ct.) 118 Misc. 699, 195 N. Y. Supp. 232.

There is a conflict as to the interpretation of statutes of this type. Parting with possession has been considered not to be "good cause" in some cases. *Bucholz v. Commonwealth* (1920, Va.) 102 S. E. 760; *Fearn v. State* (1921, Ala.) 88 So. 591. Where there is no consent, fault, or knowledge on the part of the owner, courts have been more liberal. *State v. Johnson* (1921, N. C.) 107 S. E. 433; *Hoskins v. State* (1921, Okla.) 200 Pac. 168; see (1920) 30 YALE LAW JOURNAL, 91; NOTES (1920) 34 HARV. L. REV. 200; (1920) 19 MICH L. REV. 350. This case is in accord with the construction placed by the Supreme Court on similar statutes. See *Goldsmith-Grant Co. v. United States* (1921) 254 U. S. 505, 41 Sup. Ct. 189.

LIMITATION OF ACTIONS—AMENDMENTS RESTATING CAUSE OF ACTION—CHANGING FROM REMEDY UNDER FEDERAL ACT TO REMEDY UNDER STATE STATUTE.—The plaintiff's intestate was killed while in the employ of the defendant railway. An action was begun nine months later under the Federal Employers' Liability Act but was withdrawn, and the plaintiff more than twenty-two months after the death of the intestate amended the original complaint to comply with a Virginia statute (Va. Code, 1904, ch. 137, sec. 2903) giving a cause of action for wrongful death, providing that such action was brought within twelve months after the death. The defendant contended that this cause of action had expired since the intestate had died more than twelve months prior to the filing of the amendment. The plaintiff suffered a voluntary nonsuit, and eleven months later filed a new complaint in the same language as the original complaint and amendment. *Held,* (one judge *dissenting*) that the plaintiff could not recover. *Capps v. Atlantic Coast Line Ry.* (1922, N. C.) 111 S. E. 533.

The court held that the amendment alleged a new and independent cause of action, and thus could not relate back to the date of the original petition. This seems unnecessarily harsh on the litigant who is attempting to find the correct remedy. It is usually considered the same cause of action where the amendment is an amplification of the original complaint. *Seaboard Air Line Ry. v. Renn* (1916) 241 U. S. 290, 36 Sup. Ct. 567; *Lammars v. C. G. W. Ry.* (1919) 187 Iowa, 1277, 175 N. W. 311; see (1920) 5 IOWA L. BUL. 275. The instant case can be justified by the provision of the Virginia statute that the time in which an action is pending, after an abatement or dismissal, shall not be counted as part of the period of twelve months. After suffering a nonsuit the plaintiff still had three months in which to bring another action, since only nine months of the statutory period had elapsed before the original action was brought. For the effect of statutes of limitations on amendments changing the cause of action from equity to law, see COMMENTS (1918) 27 YALE LAW JOURNAL, 1053; (1918) 27 *ibid.* 1084.

MALICIOUS PROSECUTION—PROBABLE CAUSE A QUESTION FOR THE JURY.—The defendant instigated a criminal prosecution against the plaintiff for selling obscene and indecent literature contrary to statute. N. Y. Cons. Laws, 1909, ch. 40, sec. 1141. The plaintiff was acquitted, and sued for malicious prosecution. The court left to the jury the question of whether the book was of such a character as to justify a belief that its sale was in violation of the Penal Law. *Held,* (two judges *dissenting*) that the question of probable cause was properly left to the jury. *Halsey v. The Society for the Suppression of Vice* (1922) 234 N. Y. 1, 136 N. E. 219.

Probable cause is generally defined as the existence of a state of facts and circumstances sufficiently strong to induce the ordinary and reasonable man to entertain a belief that the accused is guilty of the crime charged. *Bowen v. Pollard* (1917) 173 N. C. 129, 91 S. E. 711. Logically this is a question for the jury inasmuch as the standard adopted is that of the average reasonable man. For reasons of policy, however, most courts regard it a question of law, or, more accurately, a question of fact to be answered by the court. This view is adopted to prevent prosecutors from being harassed because a jury would be prone to find lack of probable cause after an acquittal. *Ball v. Rawles* (1892) 93 Calif. 222, 28 Pac. 937; *Hess v. Oregon German Baking Co.* (1897) 31 Or. 503, 49 Pac. 803. The decision in the instant case is opposed to the great weight of authority, and seems objectionable on grounds of policy. For a discussion of this point see COMMENTS (1916) 25 YALE LAW JOURNAL, 328; NOTES (1920) 20 COL. L. REV. 897.

MUNICIPAL CORPORATIONS—GOVERNMENTAL FUNCTIONS—COLLECTION OF GARBAGE.—The plaintiff was injured as a result of the negligent management of a city

truck used in gathering garbage, and sued the city for damages. *Held,* that the plaintiff could not recover. *James v. City of Charlotte* (1922, N. C.) 112 S. E. 423.

There is a diversity of opinion as to whether the collection of garbage and ashes and the cleaning of streets is a governmental or a corporate duty. 4 Dillon, *Municipal Corporations* (5th ed. 1911) 2899; 6 McQuillan, *Municipal Corporations* (1913) 5436. In the following cases the municipality was held liable for injuries resulting from the negligent performance of such duties. *Missano v. New York* (1899) 160 N. Y. 123, 54 N. E. 744; *Young v. Metropolitan St. Ry. Co.* (1907) 126 Mo. App. 1, 103 S. W. 135; *contra, Haley v. Boston* (1906) 191 Mass. 291, 77 N. E. 888; *Kuehn v. City of Milwaukee* (1896) 92 Wis. 263, 65 N. W. 1030. The recent tendency is to broaden the liability. *Fowler v. City of Cleveland* (1919) 100 Ohio St. 158, 126 N. E. 72; COMMENTS (1920) 29 YALE LAW JOURNAL, 911; NOTES (1920) 34 HARV. L. REV. 66.

PROPERTY—ADVERSE POSSESSION—DEFINITION OF EXCLUSIVENESS.—Although Ivy Griffin and his father cultivated certain land and divided the crops title was claimed by Ivy alone. After holding for the statutory period, Ivy granted the land to the plaintiffs, his sons, who brought an action of trespass to try title against the defendant, the record owner. *Held,* that the plaintiffs were entitled to the land. *Perry v. Griffin* (1922, Tex. Civ. App.) 241 S. W. 252.

Possession, to be adverse, must be exclusive. *Philbin v. Carr* (1920, Ind.) 129 N. E. 19; 2 Tiffany, *Real Property* (2d ed. 1920) 1929. The present case, however, very properly qualifies this statement of the rule. It is essential that the adverse possessor exclude all whose claims are equal or superior to his own. *O'Banion v. Simpson* (1920) 44 Nev. 188, 191 Pac. 1083; *Strom v. Hancock Land Co.* (1914) 70 Or. 101, 140 Pac. 458; *Woodruff v. Langford* (1908, Iowa) 115 N. W. 1020; *Wyatt v. Elam* (1857) 23 Ga. 201; Ballantine, *Claim of Title in Adverse Possession* (1919) 28 YALE LAW JOURNAL, 219; (1922) 20 MICH. L. REV. 441; (1915) 13 *ibid.* 690; (1907) 20 HARV. L. REV. 410; (1896) 10 *ibid.* 251.

PROPERTY—FIXTURES—TESTS AS TO WHEN PERSONALTY ATTACHED TO LAND BECOMES REALTY.—The plaintiff and the defendant, as joint owners of land, for a monthly rental permitted the erection by a corporation in which they were both interested of a combined fence and signboard, reserving the privilege of removal. The defendant exchanged his interest in the land for the plaintiff's interest in the corporation which erected the sign. The defendant later removed the sign, and the plaintiff brought an action for its conversion. *Held,* that the plaintiff could not recover. *Breyfogle v. Tighe* (1922, Calif. App.) 208 Pac. 1008.

Because of the rigid definition which some courts have placed upon "annexation," confusion has resulted in the law of fixtures. The better and more modern view is to interpret annexation in the light of all the surrounding circumstances. NOTES AND COMMENTS (1920) 18 MICH. L. REV. 405; NOTES (1913) 13 COL. L. REV. 247. The application of these standards varies with the relationship of the parties. As to landlord and tenant, see (1920) 29 YALE LAW JOURNAL, 930; (1921) 5 MINN. L. REV. 395; (1921) 35 HARV. L. REV. 86. As to vendor and vendee, see COMMENTS (1919) 7 CALIF. L. REV. 351; (1920) 30 YALE LAW JOURNAL, 307; (1919) 32 HARV. L. REV. 732. As to tenant and mortgagee, see NOTES (1913) 61 U. PA. L. REV. 325. A chattel annexed to the land of another by mistake may be considered personalty. (1918) 18 COL. L. REV. 367. The court in the instant case found that the parties intended the signboard to remain personalty.

QUASI-CONTRACT—RECOVERY OF MONEY PAID UNDER A MUTUAL MISTAKE OF FACT—CHANGE OF POSITION AS A DEFENSE.—The plaintiff bought an automobile from one Hughes, and paid a part of the purchase price to the defendant, who

held a note against Hughes, secured by a chattel mortgage on the automobile. Neither party knew that Hughes had stolen the automobile until after the defendant had surrendered the note and released the mortgage. After the automobile was returned to its true owner, the plaintiff sued to recover the money paid. *Held,* that the plaintiff could not recover. *Gaffner v. American Finance Co.* (1922, Wash.) 206 Pac. 916.

As between parties having equal equities, one of whom must suffer, the loss should lie where it has fallen. *Ex parte Richard & Thalheimer* (1913) 180 Ala. 580, 61 So. 819; *Atlantic Coast Line Ry. v. Schirmer* (1910) 87 S. C. 309, 69 S. E. 439; *Walker v. Conant* (1888) 69 Mich. 321, 37 N. W. 292; Woodward, *Quasi-Contracts* (1913) 39; Keener, *Quasi-Contracts* (1893) 66; Costigan, *Change of Position as a Defense* (1907) 20 HARV. L. REV. 205, 216; (1893) 7 *ibid.* 241; (1908) 8 COL. L. REV. 404.

SPECFIC PERFORMANCE—MUTUALITY—OIL LEASES.—In an action to obtain specific performance of an agreement to execute an oil lease, it appeared that the lease placed the plaintiffs under a duty to start drilling for oil on the premises within six months and to make certain small payments to the defendants. The plaintiffs were also given the power and privilege to surrender the lease at any time. *Held,* that the defendants could not be forced to execute the lease since it lacked mutuality. *Dabney v. Key* (1922, Calif. App.) 207 Pac. 921.

The above type of lease, frequently used in oil and mineral development, is usually held to lack mutuality and therefore not specifically enforceable. *Advance Oil Co. v. Hunt* (1917) 66 Ind. App. 228, 116 N. E. 340; *Watford Oil & Gas Co. v. Shipman* (1908) 233 Ill. 9, 84 N. E. 53; *contra, Guffey v. Smith* (1915) 237 U. S. 101, 35 Sup. Ct. 526, departing from *Rutland Marble Co. v. Ripley* (1869, U. S.) 10 Wall. 339; see COMMENTS (1917) 27 YALE LAW JOURNAL, 261; Ames, *Mutuality in Specific Performance* (1903) 3 COL. L. REV. 1.

TORTS—NEGLIGENCE—ATTRACTIVE NUISANCE.—The defendant had on his land a poisonous pool of water. Its appearance was similar to a swimming pool, the water being clear and appearing to be pure. Two children of the plaintiff, eight and eleven years old, came on the defendant's land, went into the pool, were poisoned and died. *Held,* (three judges *dissenting*) that, as the children were trespassers, the plaintiff could not recover, since the pool did not constitute an attractive nuisance. *United Zinc & Chemical Co. v. Britt* (1922, U. S.) 42 Sup. Ct. 299.

This case is in accord with the tendency of the federal courts to limit the doctrine of attractive nuisance to turn-tables and dangerous machinery only. *Erie R. R. v. Hilt* (1917) 247 U. S. 97, 38 Sup. Ct. 435; *Nat'l. Metal Edge Box Co. v. Agostini* (1919, C. C. A. 2d) 258 Fed. 109; see (1921) 19 MICH L. REV. 450. Some courts have extended the doctrine to other situations, but few have applied it to natural conditions, such as a pond or body of water. *Swartz v. Akron Waterworks Co.* (1907) 77 Ohio St. 235, 83 N. E. 66; *Thompson v. Ill. Cent. Ry.* (1913) 105 Miss. 636, 63 So. 185; *contra, Kansas City v. Siese* (1905) 71 Kan. 283, 80 Pac. 626. For variations in the extent of this doctrine, see (1922) 31 YALE LAW JOURNAL, 556; (1921) 31 *ibid.* 102; (1921) 30 *ibid.* 870.

TORTS—MALICIOUS PROSECUTION FOR ACTIONS NOT INVOLVING ARREST OR SEIZURE.—The defendant maliciously and without probable cause brought nine successive suits against the plaintiff, all of which terminated unsuccessfully. The defendant did not at any time cause the arrest of the plaintiff or seizure of his goods. The plaintiff brought an action for malicious prosecution. *Held,* that the plaintiff could recover. *Shedd v. Patterson* (1922, Ill.) 134 N. E. 705.

Some American courts adhere to the English rule that an action for malicious prosecution cannot be maintained in the absence of arrest of person or seizure

of property. *Jerome v. Shaw* (1916) 172 N. C. 628, 90 S. E. 764; *contra, Peerson v. Ashcraft Cotton Mills* (1917) 201 Ala. 348, 78 So. 204. It has been suggested that the element of seizure or arrest should not be decisive in the presence of all the other required elements. (1918) 32 HARV. L. REV. 85; (1918) 16 MICH. L. REV. 653. This view has found recent support. *Teesdale v. Liebschwager* (1921) 44 S. D. 58, 182 N. W. 314; *Peerson v. Ashcraft, supra*; *contra, Jerome v. Shaw, supra; Pye v. Cardwell* (1920, Tex. Civ. App.) 224 S. W. 542 (six successive suits). Illinois formerly refused an action in the absence of arrest or seizure. *Smith v. Mich. Buggy Co.* (1898) 175 Ill. 619, 51 N. E. 569. It has limited this rule, however, to ordinary civil actions and has held that a malicious and unfounded petition in bankruptcy was actionable, even though proceedings were quashed before appointment of a receiver. *Norin v. Scheldt* (1921) 297 Ill. 521, 130 N. E. 791. The instant case represents a strengthening of the desirable tendency to restrict the rule denying relief. (1921) 30 YALE LAW JOURNAL, 310.

UNFAIR COMPETITION—USE OF THE TRADE-NAME OF ANOTHER MAY BE ENJOINED.—For over fifty years the plaintiff manufactured and sold a pepper-sauce known as "Tobasco." The defendant used the word "Tobasco" to describe a pepper-sauce made by him, and the plaintiff sought an injunction. *Held,* that the use of "Tobasco" as the name of the sauce should be enjoined, but that the defendant was privileged to state that his sauce was made from Tobasco peppers. *Trappey v. McIlhenny Co.* (1922, C. C. A. 5th) 281 Fed. 23.

The use by one manufacturer of a name or a mark which misleads the public into believing that an article manufactured by it is manufactured by another is an actionable wrong. Salmond, *Torts* (5th ed. 1920) sec. 151. Thus a taxicab company was enjoined from imitating a characteristic marking already in use. *American Yellow Taxi Operators v. Diamond* (1922) 202 App. Div. 490, 195 N. Y. Supp. 140; (1920) 29 YALE LAW JOURNAL, 698. See *Eagle Pencil Co. v. Baehr* (1922, Sup. Ct.) 118 Misc. 571, 195 N. Y. Supp. 59; *Goldin v. Clarion Photoplays* (1922) 202 App. Div. 1, 195 N. Y. Supp. 455; *Royal Baking Powder Co. v. Federal Trade Commission* (1922, C. C. A. 2d) 281 Fed. 744. The law properly protects ingenious devices and names from competitors. See COMMENTS (1921) 31 YALE LAW JOURNAL, 93; (1920) 33 HARV. L. REV. 617; Haines, *Efforts to Define Unfair Competition* (1919) 29 YALE LAW JOURNAL, 1, 8.

WILLS—DESCENT AND DISTRIBUTION—PRESUMPTION OF DEATH OF ABSENT DEVISEE.—While the plaintiff was absent and unheard from for more than eight years the estate of his father, under whose will he was a devisee, was settled, and thereafter at the instance of another devisee, a partition was decreed. The court found that the plaintiff was no longer living and consequently his estate passed to the other devisees as his heirs at law, no provision being made for him upon his return. The plaintiff sued to set aside the decree for fraud and want of jurisdiction. *Held,* that his rights were not extinguished as against the parties to the record who were chargeable with notice of his interests. *Eddy v. Eddy* (1922) 302 Ill. 446, 134 N. E. 801.

The court reached this result on the analogy of cases dealing with a grant of administration upon the estate of a person in fact living. *Scott v. McNeal* (1894) 154 U. S. 34, 14 Sup. Ct. 1108; cf. *Blinn v. Nelson* (1911) 222 U. S. 1, 32 Sup. Ct. 1. It has usually been held, however, that a decree of distribution, containing a finding of death of a distributee, concludes the rights of all parties unless an appeal is taken within the time limited by statute, or otherwise set aside in some proper proceeding. *Hurt v. Hurt* (1853, S. C.) 6 Rich. Eq. 114. In attacking the original decree the plaintiff in the instant case used the proper method. For a discussion of the effectiveness of a judgment against claims of a supposedly dead absentee, see COMMENTS (1918) 27 YALE LAW JOURNAL, 943.